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Bookbinder's Seafood House, Inc. and Hotel Employees and Restaurant Employees International Union, Local 274, AFL-CIO. Cases 4-CA-30900, 4-CA-32360, 4-CA-32395, and 4-CA-32396

January 26, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND WALSH

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the consolidated complaint (complaint). Based on charges filed by Hotel Employees and Restaurant Employees International Union, Local 274, AFL-CIO (the Union) on December 5, 2001, and August 13 and August 29, 2003, the General Counsel issued the complaint on October 30, 2003, against Bookbinder's Seafood House, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On November 25, 2003, the General Counsel filed a Motion for Default Judgment with the Board. On December 5, 2003, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed by November 13, 2003, all the allegations in the complaint would be considered true. Further, the undisputed allegations in the General Counsel's motion disclose that the Respondent, by letter dated November 13, 2003, notified the Respondent that unless an answer was received by November 20, 2003, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Pennsylvania corporation, has been engaged in the operation of a restaurant at 215 South 15th Street, Philadelphia, Pennsylvania (the Restaurant). During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations described above, received gross revenues in excess of \$500,000 and purchased and received at the Restaurant goods valued in excess of \$5000 directly from points outside the Commonwealth of Pennsylvania. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Hotel Employees and Restaurant Employees International Union, Local 274, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

Until about June 1, 1997, Local Union #301, AFL-CIO, of the Hotel Employees and Restaurant Employees and Bartenders International Union (Local 301) was a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Richard Bookbinder, Ann Sullivan, and Archie Edwards held positions as the Respondent's vice president, accounting manager, and head chef, respectively, and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act.

The following employees of the Respondent (Back of the House unit and Front of the House unit, respectively) have constituted units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Back of the House Unit

All full-time and regular part-time cooks, pantry employees, dishwashers, oyster bar employees and bartenders employed at the Restaurant.

Front of the House Unit

All full-time and regular part-time waiters, waitresses, busboys, hostesses and cashiers employed at the Restaurant.

At all material times, the Respondent has recognized the Union as the exclusive collective-bargaining representative of the Back of the House unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which (the Back of the House Agreement), was effective by its terms from No-

vember 1, 1995 to November 7, 1998. The Back of the House Agreement was extended until November 7, 2001.

At all material times, until about June 1, 1997, the Respondent recognized Local 301 as the exclusive collective-bargaining representative of the Front of the House unit. This recognition was embodied in a collective-bargaining agreement between the Respondent and Local 301 (the Front of the House Agreement), effective by its terms from January 2, 1996 through January 2, 2000. On about June 1, 1997, the Union succeeded Local 301 as the exclusive collective-bargaining representative of the Front of the House unit, and was so recognized by the Respondent on that date.

At all material times, since at least November 1, 1995, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Back of the House unit.

At all material times, since at least June 1, 1997, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Front of the House unit.

During the period between June 6, 2001 and April 16, 2002, the Respondent failed and refused to make welfare and pension contributions to funds set forth in article XIX of the Back of the House Agreement.

On about the dates set forth opposite their respective names, the Respondent, by Richard Bookbinder, Ann Sullivan, and Archie Edwards, bypassed the Union and dealt directly with Back of the House unit employees, by advising the employees that the Respondent was seeking to change their health insurance coverage or provider and by presenting them with forms and documents for signature so that the Respondent could effect this change:

Richard Bookbinder	August 8, 2003
Ann Sullivan	Late July or early August, 2003
Archie Edwards	August 15, 2003

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the Back of the House unit and are mandatory subjects for the purpose of collective bargaining.

By failing and refusing to make the welfare and pension contributions described above during the period prior to November 7, 2001, the Respondent failed and refused to continue in effect article XIX of the Back of the House Agreement.

The Respondent failed and refused to make welfare and pension contributions to the funds between June 6, 2001 and April 16, 2002, without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct. Further, the Respondent failed and refused to make the

welfare and pension contributions between June 6 and November 7, 2001, without the Union's consent.

On about July 23, 2003, the Union, by letter, requested that the Respondent furnish it with the following information:

1. A complete and accurate list of all employees, whose jobs are included in the jobs represented by Local 274, including full name, address, phone number, social security number, date of hire, rate of pay, and last increase date and amount.
2. A complete and accurate list of any and all health and welfare payments made by the employer in calendar year 2003 for any employee.
3. A complete and accurate Summary Plan Description for any health and welfare plan that the employer has in effect for any employee at your work location.
4. An Hours Report, showing the hours worked by individual for the last six (6) weeks.
5. A copy of your Workers' Compensation Policy, including information on who your agent is and the carrier that you use.

With the exception of employee social security numbers, the information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the employees in the two units.¹ Since about July 23, 2003, the Respondent has failed and refused to furnish the Union with the information requested by it.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having

¹ The Board has held that social security numbers are not presumptively relevant. Accordingly, in the absence of a showing here of their potential or probable relevance, we deny the motion for summary judgment with respect to the failure to provide social security numbers, and remand that issue to the Regional Director for further appropriate action. See *American Gem Sprinkler Co.*, 316 NLRB 102, 104 fn. 7 (1995); *Turner-Brooks of Ohio*, 310 NLRB 856, 857 fn.2 (1993), *enfd. mem.* 9 F.3d 108 (6th Cir. 1993); and *Sea-Jet Trucking Corp.*, 304 NLRB 67 (1991).

found that the Respondent has violated Section 8(a)(5) and (1) by failing and refusing between June 6, 2001 and April 16, 2002 to make welfare and pension contributions to funds set forth in article XIX of the Back of the House Agreement, we shall order the Respondent to honor the terms and conditions of the agreement, until a new agreement or good-faith impasse in negotiations is reached, and to make whole the Back of the House unit employees for any loss of earnings and other benefits they may have suffered as a result of the Respondent's unlawful conduct.

Further, we shall order the Respondent to make all required welfare and pension contributions that were not made on behalf of the Back of the House unit employees between June 6, 2001 and April 16, 2002, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).² The Respondent shall also be required to reimburse the unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), *affd.* mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), *enfd.* 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, we shall require the Respondent to furnish the Union with the information it requested on July 23, 2003, with the exception of employees' social security numbers.

ORDER

The National Labor Relations Board orders that the Respondent, Bookbinder's Seafood House, Inc., Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally ceasing to make welfare and pension contributions on behalf of employees in the Back of the House unit described below to funds set forth in article XIX of the November 1, 1995–November 7, 1998 collective-bargaining agreement between the Respondent and Hotel Employees and Restaurant Employees International Union, Local 274, AFL–CIO, which was extended until November 7, 2001.

(b) Bypassing the Union and dealing directly with employees in the Back of the House unit by advising the

employees that the Respondent was seeking to change their health insurance coverage or provider and by presenting them with forms and documents for signature so that the Respondent could effect this change.

(c) Failing to furnish the Union with information that is relevant and necessary to the Union's performance of its duties as the exclusive collective-bargaining representative of the employees in the following appropriate units:

Back of the House Unit

All full-time and regular part-time cooks, pantry employees, dishwashers, oyster bar employees and bartenders employed at the Restaurant.

Front of the House Unit

All full-time and regular part-time waiters, waitresses, busboys, hostesses and cashiers employed at the Restaurant.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Honor the terms and conditions of the November 1, 1995–November 7, 1998 collective-bargaining agreement, which was extended until November 7, 2001, until a new agreement or good faith impasse in negotiations is reached, and make whole the Back of the House unit employees, with interest, for any loss of earnings and other benefits they may have suffered as a result of the Respondent's failure and refusal to make welfare and pension contributions to funds set forth in article XIX of the agreement between June 6, 2001 and April 16, 2002, in the manner set forth in the remedy section of this decision.

(b) Make all required welfare and pension contributions to funds set forth in article XIX of the agreement that were not made between June 6, 2001 and April 16, 2002, and reimburse the unit employees for any expenses resulting from its failure to make the required contributions, with interest, in the manner set forth in the remedy section of this decision.

(c) Furnish the Union with the information requested in its letter dated July 23, 2003, with the exception of employees' social security numbers.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form,

² To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Philadelphia, Pennsylvania, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in this proceeding, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 6, 2001.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 26, 2004

Robert J. Battista,	Chairman
Wilma B. Liebman,	Member
Dennis P. Walsh,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD
APPENDIX
NOTICE TO EMPLOYEES
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT unilaterally cease making welfare and pension contributions on behalf of employees in the Back of the House unit described below to funds set forth in article XIX of the November 1, 1995–November 7, 1998 collective-bargaining agreement between us and Hotel Employees and Restaurant Employees International Union, Local 274, AFL-CIO, which was extended until November 7, 2001.

WE WILL NOT bypass the Union and deal directly with employees in the Back of the House unit by advising the employees that we were seeking to change their health insurance coverage or provider and by presenting them with forms and documents for signature so that we could effect this change.

WE WILL NOT fail and refuse to furnish the Union with information that it necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the employees in the following appropriate units:

Back of the House Unit

All full-time and regular part-time cooks, pantry employees, dishwashers, oyster bar employees and bartenders employed at the Restaurant.

Front of the House Unit

All full-time and regular part-time waiters, waitresses, busboys, hostesses and cashiers employed at the Restaurant.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL honor the terms and conditions of the November 1, 1995–November 7, 1998 collective-bargaining agreement, which was extended until November 7, 2001, until a new agreement or good faith impasse in negotiations is reached, and WE WILL make whole the Back of the House unit employees, with interest, for any loss of earnings and other benefits they may have suffered as a result of our failure and refusal to make welfare and pension contributions to funds set forth in article XIX of the agreement between June 6, 2001 and April 16, 2002.

WE WILL make all required welfare and pension contributions to funds set forth in article XIX of the agreement that were not made between June 6, 2001 and April

16, 2002, and WE WILL reimburse the unit employees for any expenses resulting from our failure to make the required contributions, with interest.

WE WILL furnish the Union with the information requested in its letter dated July 23, 2003, with the exception of employees' social security numbers.

BOOKBINDER'S SEAFOOD HOUSE, INC.